



IMO

*E*

MARINE ENVIRONMENT PROTECTION  
COMMITTEE  
45th session  
Agenda item 2

MEPC 45/2/9  
26 July 2000  
Original: ENGLISH

## HARMFUL AQUATIC ORGANISMS IN BALLAST WATER

Submitted by the United States

### SUMMARY

***Executive summary:*** In its report to MEPC 44, the Ballast Water Working Group asked that delegations give serious intersessional consideration to a “two-tier” approach to ballast water management. It was hoped that such consideration would facilitate work on filling in the framework of a draft convention at MEPC 45 to address the spread of harmful aquatic organisms and pathogens through ships ballast water. The United States is interested in continuing discussions regarding the two-tier approach in the hopes that these discussions will lead to an acceptable draft instrument. This paper presents the United States conceptual view of how a two tier approach might operate and how portions of the draft framework could be developed

***Action to be taken:*** Paragraph 12

***Related documents:*** MEPC 45/2, MEPC 44/20

### Background

1 At MEPC 44, the Ballast Water Working Group began consideration of a different approach to development of an instrument to address the spread of harmful aquatic organisms and pathogens by ships, the so-called “two-tier approach.” This two tier regime represents a rather significant departure from the approaches discussed at MEPC 42 and 43 which attracted support and opposition to the point where the probability of reaching consensus on any of them seemed remote.

2 The report of the Working Group at MEPC 44, MEPC 45/2, expresses the view that the two tier approach warrants serious consideration by all delegations. Agreement on such an approach would allow the Working Group to work on filling in the draft framework of a two-tier instrument produced by the Working Group (MEPC 45/2 Annex 3). The United States agrees that further consideration of the two-tier approach may lead to a fruitful discussion towards an acceptable instrument. However, as the Working Group recognized, the key to success of the two-tier approach lies in fully developing the concepts and details embraced within that approach. To that end, this paper offers the United States view of how a two-tier approach might operate.

### **General Comments on the Two-Tier Approach**

3 In broad terms, the Working Group decided that the two tier approach should operate as follows:

- .1 Tier One would contain requirements applicable to all ships, at all times, all over the world. As currently envisioned by the Working Group, the initial Tier One requirements would be rather minimal, i.e. a ballast water management plan, record keeping, and the ability to manage ballast water and sediments. While it was noted that some new ship designs are taking ballast water management control options into consideration, many believed that technology was not sufficiently advanced at this time to safely require a primary ballast water management option (such as ballast water exchange) in Tier One.
- .2 Tier Two would recognize the ability of countries to designate areas where “further measures to those set out in Tier One” could be required. As currently envisioned by the Working Group, these “further measures” might include a requirement to conduct a ballast water management option within a designated ballast water management area. The IMO would develop criteria for the designation of these areas.

4 The goal of the ballast water management instrument should be to ensure that maritime transportation can take place in a manner that achieves the maximum level of protection from transfers of harmful aquatic organisms and pathogens in ships’ ballast water. To accomplish this, the instrument must be structured so that it will encourage the rapid development of standards and technology so that, over time, Tier One (i.e. standards applicable to all ships everywhere) becomes the norm for operational requirements, with Tier Two being utilized only in exceptional circumstances. In this way the need to create or maintain ballast water management areas would largely disappear, and the requirements of Tier One would evolve as the everyday standard. This would allow, in general, consistent, universal requirements to be achieved, so that ships could prepare and equip themselves to meet ballast water management requirements in the vast majority of situations world-wide, while simultaneously ensuring a greater level of protection of the marine environment.

5 In order for the objectives described in paragraph 4 to be achieved, Tier One and Tier Two must be structured to exert pressure on the development of effective technologies that can be applied to meet a standard in Tier One. The remainder of this paper offers recommendations on how this aim might be accomplished.

### **Requirements for Tier One**

6 The United States agrees that Tier One should include, in part, the requirements conceptually agreed to by the Working Group, i.e.:

- .1 a Ballast Water Management Plan;
- .2 a Ballast Water Record Book; and
- .3 sediment management practices for new and existing ships.

In addition, the United States believes Tier One should include the following:

- .4 requirements for new ships to meet a ballast water management standard; and

- .5 requirements for existing ships to meet a ballast water management standard based on a phased in implementation schedule.

As a result, the structure of these additional Tier One requirements would be somewhat similar to that of MARPOL 73/78, Annex I, Regulation 13 for new and existing ships.

7 It is recognized that development of both the standard and the implementation dates for new and existing ships will be the subject of significant detailed discussion at future MEPC meetings so that agreeable solutions can be reached. However, establishing a mechanism in the draft document to insert the standard and implementation dates will help focus the discussion, allow work on standards and dates to continue (possibly apart from the efforts of drafting the instrument itself), while at the same time allowing other parts of the draft convention to be developed.

### **Requirements for Tier Two**

8 Under Tier 2, Contracting Parties would maintain their ability, consistent with international law, to protect against the spread of harmful aquatic organisms and pathogens. Once Tier One becomes fully effective, the need for countries to establish or maintain ballast water management areas should be substantially diminished, outside unusual or emergency circumstances.

9 The criteria for establishment of a Tier Two area should be general in nature. Criteria that are overly complex or contain significant technological and research obstacles would make it difficult for some countries to take measures to stop the spread of harmful aquatic organisms and pathogens in their waters. Further, criteria for the establishment of Tier Two areas which are overly comprehensive may act as a disincentive to the development of technological innovations which would enable ships to meet the Tier One standard.

10 The criteria for establishing a ballast water discharge control area should be limited to:

- .1 Adequate notification. A Party must notify the Organization of its plans to establish a ballast water management area. The Party must include the geographical boundaries of the area, as well as the reasons for establishing the area and the operational requirements for ships operating in the area. A ballast water management area will not go into effect until adequate notice of the geographical and operational parameters has been provided to the Organization.
- .2 Prevention of adverse impact. If a State believes that the establishment of a ballast water management area by a Party may adversely effect the waters under its jurisdiction, that State may request consultation with that Party with a view towards resolution.
- .3 Effectiveness. To establish a ballast water management area, a Party must reasonably believe, based on scientific studies, that the operational requirements in the ballast water management area are effective in preventing or minimizing the transfer of harmful aquatic organisms or pathogens.
- .4 Monitoring. A Party establishing a ballast water management area should endeavor to conduct monitoring of that area to determine its effectiveness in preventing or minimizing the transfer of harmful aquatic organisms or pathogens, and provide those findings to the Organization for circulation to other Parties.

- .5     Relationship to international law. All established ballast water management areas and actions taken to enforce compliance with those areas shall be consistent with international law, including relevant portions of the United Nations Convention on the Law of the Sea. The establishment of a ballast water management area shall not prejudice the rights and duties of Governments under international law or the legal regimes of straits used for international navigation and archipelagic sea lanes.

11     For ballast water loading (uptake) control areas or areas subject to regional agreements, the criteria in paragraph 10 should apply. Additional criteria, guidelines or considerations may also be necessary.

**Action requested of the Committee**

- 12     The Committee is invited to consider the above comments and take action as appropriate.
-